HENRY A. ALKER

IBLA 81-679 Decided March 10, 1982

Appeal from a decision of the Colorado State Office, Bureau of Land Management, rejecting protest of simultaneous oil and gas lease offer, C-30433.

Affirmed.

1. Administrative Practice -- Appeals -- Board of Land Appeals

   Where a protest filed against the issuance of an oil and gas lease alleges several specific reasons why the lease should not issue, and BLM dismisses the protest after due consideration of the reasons recited, and on appeal from such dismissal the protestant raises additional arguments and issues, the Board of Land Appeals need not adjudicate the issues raised for the first time on appeal, but may confine its review to the merits of those matters addressed in the decision which is the subject of the appeal.

2. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Drawings

   In completing a simultaneously filed application card for an oil and gas lease, the regulations do not require the person signing the card to sign his principal's name holographically in ink as well as his own; neither is it required that marks employed to indicate answers to the questions on the card be entirely confined within the check-block boxes; nor is it required that such marks be entered manually instead of mechanically.

APPEARANCES: R. Hugo C. Cotter, Esq., Albuquerque, New Mexico, for appellant; Michael M. Wilson, Esq., Hartford, Connecticut, for Ballard and Orbell Associates; Harold J. Baer, Jr., Esq., Office of the Solicitor, U.S. Department of the Interior, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On April 21, 1981, the Colorado State Office, Bureau of Land Management (BLM), issued a decision which dismissed a protest which had been filed by Henry A. Alker, appellant. Ballard and Orbell Associates ("the partnership") had received first priority for parcel CO-213, serial no. C-30433, in the July 1980 simultaneous filing in the State of Colorado. Alker received second priority and had filed a protest on January 28, 1981. He protested because there was no manual signature of the applicant on the first-drawn card, and because the marks on the back of the DEC were not completely within the check-block boxes, and because such marks were made mechanically. No other issues were raised by the protest. The BLM decision dismissed the protest because BLM had determined that the winning card had been signed manually by the properly authorized agent of Ballard and Orbell Associates and because BLM determined that the marks were sufficiently in the boxes to establish that Ballard and Orbell Associates was qualified to hold the oil and gas lease.

Having examined the record and the drawing card in question, we agree with BLM's findings and conclude that dismissal of the protest on the grounds stated was an appropriate response. Accordingly, we will dispose of the appeal by affirming the decision of BLM on the merits of the issues raised by the protest and the advocacy of those issues only on appeal. However, appellant's statement of reasons seeks to raise new issues which were not the subject of the protest and which were not addressed by BLM in its decision. Counsel for the partnership has answered, saying, in part:

> 2. ALL OF APPELLANT'S FILINGS SUBSEQUENT TO THE ORIGINAL PROTEST OF HENRY A. ALKER OF JANUARY 24, 1981 SHOULD BE IGNORED BY THE BOARD OF LAND APPEALS. Appellant's Statement of Reasons (May 28, 1981) and Rejoinder (August 13, 1981) are clearly inapplicable as they are significantly beyond the scope of Appellant's original protest and erroneously enlarge the issues under consideration. Consequently, it is within the sound discretion of the Board * * * to purge the file regarding this case of any and all affirmative pleadings subsequent to the January 24, 1981 protest.

Except in extraordinary circumstances, this Board does not review issues which have not been the subject of a decision which is before us on appeal, and we decline to do so in this instance. However, all pleadings submitted in a case which is properly before us become part of the administrative record and are retained in the file regardless of whether such pleadings include irrelevancies or matters not within our jurisdiction. To selectively purge the record would, for example, frustrate the process of

judicial review which, in these cases, is not by a trial de novo but is confined to a review of the administrative record compiled by the agency.

Turning to the issues raised by the protest and rejected by BLM's decision, the protestant declared:

> My grounds are as follows: (1) The application is not signed manually in ink by the applicant but instead is only typed. (2) The certifications on the back of the card are made by X's which are primarily outside the boxes and also cross at their center totally outside the boxes. (3) The certifications on the back are apparently signed by the agent, not the applicant. (4) The X marks are apparently placed in some mechanical fashion as they all are equally placed above the boxes. These statements are part of the application and, as such, should be completed manually, not mechanically.

With reference to the first ground, the card was completed by typewriting the words: "Ballard & Orbell Associates, Principal by Petro Data Inc. Agent."

In the space below, marked "Agent's Signature" appears a signature, written in ink by hand. The signature is sufficiently legible to be read "Robert G. Adelson," and compares favorably with the signature specimen contained in the record as the individual authorized to sign such applications on behalf of Petro Data, Inc. We are unable to construe the controlling regulation, 43 CFR 3112.2-1(b) as requiring that where an agent signs an application holographically in ink with his own name on behalf of his principal, he must also sign his principal's name holographically in ink. In fact, the regulation clearly provides otherwise by stating, "The application shall be signed holographically (manually) in ink by the applicant or holographically (manually) by anyone authorized to sign on behalf of the applicant." The use of the disjunctive "or" provides an obvious alternative.

The second ground of the protest, that the typewritten capital "X's" used to mark the check blocks on the application form are not wholly within the boxes, is regarded as frivolous. All of the marks are sufficiently within the boxes that the intended answers to the questions are unmistakable and indisputable on any rational basis.

Finally, the contention that the answers to the questions must be marked in the boxes manually instead of mechanically is not supported by any reference to such a requirement, and no such requirement is known to us.

In addition to the pleadings filed by appellant and respondent, a motion was filed on behalf of BLM by the Office of the Regional Solicitor to dismiss the appeal on the basis of an inadequacy in the partnership agreement of Ballard and Orbell Associates on file in the BLM office. The partnership responded with evidence intended to rebut this allegation. We reiterate that it is not ordinarily the function of the Board to make initial decisions on questions not raised in the proceeding below. The motion is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed and the case is returned to the Colorado State Office for such further processing as is required.

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Edward W. Stuebing
Administrative Judge

We concur:

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James L. Burski
Administrative Judge

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Bruce R. Harris
Administrative Judge